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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,734	07/31/2000	Thomas Elliot Rabe	7730R	4129

27752 7590 08/13/2002

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EXAMINER

NGUYEN, HELEN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/629,734

Applicant(s)

RABE ET AL.

Examiner

Helen Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 8,9,22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15.
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

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112, second paragraph of record set forth is repeated for the following

reason:

❖ The following is a quotation of the **second paragraph of 35 U.S.C. 112:**

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7, and 10-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase "treating the skin" is vague. What is the purpose of the treatment of the skin? For a disorder?

- Applicants cite another patent using the same language. However, the prosecution history of that patent is not relevant to the instant application.

Claim rejection- 35 USC 103

The rejection of claims 1-7, and 10-21 under 35 USC 103(a) of record set forth is repeated for the following reason:^s_Λ

❖ The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this

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title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnett et al. (US Patent No. 5,494,674) in view of Masuda (WO 98/26752).

Barnett et al. teach an electrostatic spraying system for skin treatment agents. Cost effectiveness, safety, and evenness of coverage on the skin surface during application is disclosed (abstract; column 1, lines 6-10; column 2, lines 55-63; column 3, lines 45-46; and column 4, line 45). Skin conditioning agents, skin cleansers, skin nutrients or healing agents, anti-aging agents, skin coloring agents, and moisturizers are specified (column 4, lines 5-38). Propylene glycol is specified (column 4, line 56). A flow rate, a voltage, and an application rate of the electrostatic spray are specified (column 6, lines 28-31, 50-53; and column 8, lines 35-37).

Barnett et al. do not teach an emulsion composition containing volatile silicones.

Masuda teaches an emulsion composition comprising:

- up to about 90% of volatile silicones as an external phase; and

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- up to about 30% of propylene glycol as an internal phase (abstract; page 3, lines 34-37 bridging page 4, lines 1-6, line 10; and page 7, line 23).

The composition further comprises emulsifiers (page 5, line 14).

Silicone viscosities under 10,000 cSt are specified (page 4, lines 19-20, 26-27 and 36).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to deliver the composition of Masuda to achieve the beneficial effect of cost effectiveness, safety, and evenness of coverage on the skin surface during application by using an electrostatic spray in view of Barnett et al.

As to the claimed solid, Applicants' "or less" includes zero.

- Applicants argue that Barnett et al. teach away from stabilizing agents. However, Masuda teaches stabilizers (page 5, line 15) are optional.
- Applicants argue that Barnett et al. do not teach emulsions. However, Barnett et al. teach active agent(s) miscible with a solvent (column 4, line 53). Thus, emulsions are deliverable in the Barnett et al. composition.

Conclusion

Claims 1-7, and 10-21 are rejected.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Edward J. Webman can be reached at (703) 308-4432 or her supervisor, Minna Moezie can be reached at (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen
Patent Examiner

August 2, 2002



EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500